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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of	)	
	)	
Amendment of Part 1 of the	)	
Commission's Rules --	)	WT Docket No. 97-82
Competitive Bidding Proceeding	)	
	)	
Comments on Broadband PCS	)	
C and F Block	)	DA 97-679
Installment Payment Issues	)	
	)	

To: The Commission

COMMENTS OF POCKET COMMUNICATIONS, DEBTOR-IN-POSSESSION

Pocket Communications, Inc., debtor-in-possession ("Pocket"),[1/] respectfully submits these comments in response to the June 2, 1997 Public Notice[2/] released by the Wireless Telecommunication's Bureau.

Like most C block companies, Pocket has experienced difficulties in raising the substantial financing needed to not only repay the government debt but to build out its licenses and offer service to the public.[3/] Pocket (and its license holding subsidiary) has been attempting

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[1/] On March 31, 1997, both Pocket and DCR PCS, Inc., its license-holding subsidiary, filed Chapter 11 petitions for bankruptcy. Both entities continue to operate as debtors-in-possession.

[2/] Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues, WT Docket 97-82, DA 97-679.

[3/] This lack of funds ultimately led Pocket and its license-holding subsidiary to file for protection under Chapter 11 of the Bankruptcy Code in order to avoid foreclosure when an interest payment to a third-party secured creditor became due. Pocket's comments herein do not relate to that Bankruptcy Court proceeding, but are aimed at the issues generally applicable to to reorganize as quickly as possible, and have held several discussions with potential investors over the past months. For Pocket, and for all C block companies attempting to raise financing and implement their business plans, the amount of the government debt and the structure of the installment payment obligations have played and will continue to play a critical role. Market conditions with respect to the wireless industry (including but not limited to PCS) have changed substantially since the C block auction, and the value of the spectrum has dropped considerably. Small business licensees will not be able to introduce competitive service to the public, and the mandate in Section 309(j) of the Communications Act to expedite provision of new services and to "ensure that small businesses .... are given the opportunity to participate in the provision of spectrum-based services"[4/] will not be realized, unless the government debt is rationalized so that it reflects the current market value of the licenses.

Section 309(j)(4)(A) provides the Commission with the authority to consider "alternative payment schedules and methods of calculation" in order to "promote the objectives" of the Act, including providing "economic opportunity" to small businesses.[5/] To that end, the Commission consistently has supported "[m]arket-oriented solutions to problems of financial distress,"and it has indicated its willingness to discuss a "restructured payment plan."[6/] As Chairman Hundt recently stated, "new entrants [should be allowed] to succeed or fail based on their business plans and their ability to attract customers, not because of the weight of their debt burden. This

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the C block.

4/ 47 U.S.C. §§ 309(j)(4)(C), (D).

5/ Id. §§ 309(j)(4)(A), (3)(B).

6/ See, e.g., Leonard J. Kennedy, DA 96-2123 at 2-3 (Dec. 17, 1996).

means we should offer to restructure the debt of licensees who still owe the government money for their licenses."[7] Recent events, such as Pocket's bankruptcy filing and the financial distress of many other C block entities, demonstrate that under current market conditions, the weight of the government debt has made it impossible for C block licensees to implement their business plans. A prompt resolution to this problem is critical.

In reaching such a plan, which Pocket agrees must be "market-oriented" in order to be meaningful, the Commission's decision should be informed by the following considerations: (1) The debt must reflect the fair market value of the licenses; (2) the amount of the debt and the payment plan must be designed so that it will be feasible for the licensees to operate their businesses; (3) the timing and amount of repayment must ensure the availability of capital to finance the construction of the licenses;[8] (4) the plan likewise must advance the ability of the licensees to provide prompt service to the public; and, finally, (5) the plan must take into account when there reasonably is likely to be a cash flow available for repayment, assuming a practicable business plan, and how the timing of repayment would affect licensees' businesses.

These considerations, which reflect the economics of the C block generally, are more relevant than each licensee's specific business plan. As Chairman Hundt has noted, licensees

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[7] Spectrum Policy and Auctions: What's Right, What's Left, Remarks of Chairman Hundt to Citizens for a Sound Economy at 5 (June 18, 1997).

[8] As Pocket argued in its initial comments in the rulemaking regarding Part 1 of the Commission's rules, the Commission should amend the installment plan so that licensees are not required to begin making installment payments prior to the time when they can be realistically expected to have initiated service and begun collecting revenues. The build-out schedule imposes costs on licensees in addition to the government debt that must be taken into consideration. Comments of Pocket Communications, WT Docket No. 97-82 at 5 (March 27, 1997).

should be able to operate if the debt reflects the licenses' "current dollar value."[9] The amount of the debt -- rather than a maturity date that extends beyond the license term, or any credit for the sunk cost of the 10% downpayment -- is the essential factor necessary to provide C block licensees "with the opportunity to compete."[10]

Various business plans may best be served by different repayment terms. For example, the timing of repayment and how that factors into having cash available to build out licenses could substantially affect licensees' business plans. While the Commission must take this into consideration, as noted above, it may not be possible to devise a single plan that will be consistent with the business plans of all BTAs and all licensees at this point. Thus, the Commission may be able to provide licensees with the most meaningful opportunity by permitting them to select one of several repayment instruments (though all resulting in the Commission's receipt of the same dollar amount). Under this approach, the final maturity date and the formula for assessing the present value of all C block government debt would be standardized, but licensees could select the instrument containing other terms best tailored to fit individual business plans.

As Pocket previously noted in the Part 1 rulemaking,[11] other standardized changes also are critical to provide small business C block licensees with a realistic opportunity to compete. For example, the Commission should dispense with the C (and F) block control group

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9/ Remarks of Chairman Hundt, at 5.

10/ Id.

11/ Comments of Pocket Communications, at 2-3.

requirement, as it has done for other newer services,[12] and as it has proposed to do prospectively.[13] The de jure and de facto control requirement is much more flexible and realistic, it has an established history of Commission interpretation, and it would help small business principals to attract financing. Abandoning the control group rules would be particularly helpful to licensees that wish to undertake a public offering, which was at least initially perceived as the most promising avenue for many C block entities due to the large amount of money needed to build out PCS systems.

In addition, the unjust enrichment penalties should be rationalized so that licensees can transfer individual licenses that no longer make sense with otherwise successful business plans; as Pocket explained in its initial comments, reducing the unjust enrichment penalties on a sliding scale over time would permit licensees to respond to market realities while still serving the Commission's interest in ensuring that the installment payment benefits are not abused.[14] And finally, the Commission must clarify that default on one C block license will not result in revocation of all license, or licensees will be unable to attract market-specific financing, which is proving to be a potential source of funding for many licensees.[15]

12/ See, e.g., Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, FCC 97-82, ¶ 352 (released March 13, 1997).

13/ Notice of Proposed Rulemaking, WT Docket No. 97-82, ¶ 28 (February 28, 1997).

14/ Comments of Pocket Communications, at 6.

15/ See id. at 12.

<u>CONCLUSION</u>

The Bureau is to be commended for responding to the financial distress demonstrated by many C block licensees and for working quickly to advance Congress' and the Commission's interest in helping small business licensees. Speedy resolution of this proceeding is essential in order to forestall further or worsening financial distress among licensees. The C block government debt should be restructured in keeping with the concerns articulated above.

Respectfully submitted,

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